

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT AND LICENSE NO. 15168
Issued to: Lawrence Edward CONLEY Z-293 30 9638

DECISION OF THE COMMANDANT ON REVIEW
UNITED STATES COAST GUARD

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Lawrence Edward CONLEY

This review is undertaken on my own motion, pursuant to 46 CFR 5.35, based solely upon a reading of the initial decision in the case. The captioned seaman was served with charges on 12 September 1978 at Jacksonville, Florida, and hearing was held on 21 September 1978 at Tampa, Florida. The hearing was held in absentia and decision was reserved. On 2 October 1978, the Administrative Law Judge who heard the case entered a decision holding the charge and single specification proved and containing an order revoking all licenses and documents issued to the person charged.

The notice of hearing spelled out the jurisdictional basis and the complaint as follows:

You...are hereby charged to appear at a hearing under the provisions of R.S. 4450, as amended, (46 USC 239) and the regulations promulgated thereunder looking to the suspension or revocation of your license...you are hereby charged as follows:

FIRST CHARGE: CONVICTION FOR A NARCOTICS LAW VIOLATION.

FIRST SPECIFICATION: In that you, while serving as operator of uninspected towing vessels upon inland waters not including Western Rivers and the Great Lakes, being the holder of the captioned documents on 3 March 1977 in the County of Duval and State of Florida, did unlawfully and knowingly be in possession of a controlled substance, to wit less than five (5) grams of Cannabis for which he was convicted in a Court of Record of the State of Florida on 17 July 1978.

The notice of hearing was specifically framed in these terms. The discrepancies were not through oversight or typographical error, since a potential citation of Act, July 15, 1954, ch 512 (46 U.S.C. 239b), was stricken from the printed matter of the form used, the charge of "MISCONDUCT" as an alternative to the charge served was specifically stricken, and the allegation that the party's service was "under authority of the captioned documents" was specifically ruled out. The notice if defective then in blending elements of a

specification of "misconduct" (possession of cannabis) with elements of a specification alleging simply the conviction of violation of an appropriate narcotic drug law. It is also defective in linking the specific charge, "CONVICTION FOR A NARCOTICS LAW VIOLATION" with the assertion of jurisdiction under R.S. 4450 (46 U.S.C. 239).

It is probable that these and other deficiencies could have been corrected at hearing but since it was held in absentia the required notice could not be given.

The initial decision compounds the error, not merely in finding both the incompatible "charge" and "specification" proved, but in asserting that section 4450 of the Revised Statutes is identical with 46 U.S.C. 239b.

In view of the action taken here I need not consider whether the denial of a telephone request for a postponement of proceedings was, on the reason given in the initial decision, an arbitrary and capricious action.

CONCLUSION

I conclude that the fatal deficiencies in the notice of hearing render the proceeding held a nullity. There was no valid statement of actionable conduct under any authorizing statute and therefore the purported notice was ineffective. Upon entry of the herein, there is no bar to further proceedings undertaken on a valid notice.

ORDER

The decision of the Administrative Law Judge entered at Jacksonville, Florida, on 2 October 1978 is SET ASIDE and the proceedings held on the purported notice of hearing served on 21 September 1978 are declared a nullity.

J.B. Hayes
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this eighth day of March 1979.

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Charges and Specifications

- defective, specification not supporting charge
- variance, charge and specification

Narcotics

- conviction improperly charged as misconduct